

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. R-04/10-176  
 )  
 Appeal of )

The petitioner appeals a decision of the Department for Children and Families, Child Development Division denying her request for child care subsidy benefits for her children. The issue is whether the Department can require the inclusion of her husband's income in determining the petitioner's financial eligibility in accord with the pertinent regulations. The following facts are not in dispute and are based on the written record and the representations of the parties at telephone status conferences held on April 12, May 18, and June 7, 2010.

1. The petitioner has four children. She initially applied for a child care subsidy on June 25, 2009. On her application she indicated that she and her husband were "separated", but she crossed out the word "legally" on the form. The petitioner did not include any income information regarding her husband. The Department granted this

application on a "temporary basis" (three months) in order to allow the petitioner to submit "legal separation paperwork".

2. On September 21, 2009 the Department notified the petitioner that her subsidy had been terminated due to her failure to verify her legal separation from her husband. There is no indication that the petitioner appealed this decision.

3. On March 16, 2010 the petitioner submitted an online application for a subsidy. On the application the petitioner listed herself as "married", but she did not include her husband's name on the application as being a member of her household.

4. On March 25, 2010 the petitioner told the Department in an interview that her husband lives in New Hampshire and makes \$18 an hour. The Department informed her that her application was denied because she had not demonstrated that she was legally separated. This decision was affirmed by the Department in a Commissioner Review letter dated June 1, 2010.

5. At the most recent telephone status conference held in the matter the petitioner admitted that she has taken no legal action against her husband for support for his

children.<sup>1</sup> She described her and her husband's marital status as unresolved. Nonetheless, the petitioner maintains that the Department should not consider her husband's income in determining her eligibility for a child care subsidy.

ORDER

The decision of the Department is affirmed.

REASONS

The regulations adopted by the Child Care Services Division define income for purposes of determining eligibility for a child care subsidy as including "all payments received by a primary caretaker[s]". Regs. § II(B)(2). The regulations define a "primary caretaker" as follows: "Biological, adoptive or foster parent of a child, a child's legal guardian or other person *legally* responsible for a child's welfare" (emphasis added). Id. § I (B)(22). There is no provision in the regulations regarding the residence of primary caretakers. Inasmuch as there is no dispute that the petitioner's husband still bears full legal responsibility for his children, it cannot be concluded that

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<sup>1</sup> At the last status conference the hearing officer advised the petitioner that if she was inclined she could seek the services of the Office of Child Support in this regard.

the Department has acted contrary to its regulations or public policy in not requiring that his income be considered in the determination of whether his children are eligible for a child care subsidy. Inasmuch as the Department's decision in this matter correctly applies its current regulations and policies, the Board is bound to affirm that decision. 3

V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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